

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	CASE NO. 03-99076
	:	
NADER KAZEM,	:	CHAPTER 7
	:	
Debtor.	:	JUDGE BIHARY
_____	:	

ORDER

This Chapter 7 case is before the Court on a motion filed by Mike Samadi *pro se* to reopen the case in order to proceed with a motion styled as “Creditor’s Motion to Revoke Discharge and Motion for Relief from Order.” Both motions were filed on January 3, 2005. Mr. Samadi seeks to reopen this closed Chapter 7 case to revoke debtor's discharge. After carefully considering Mr. Samadi's pleadings and the record in this case, the Court concludes that the motions cannot be granted.

Debtor commenced this Chapter 7 case by filing a petition for relief on August 26, 2003. Debtor's bankruptcy schedules list Mr. Samadi as an unsecured creditor with a \$17,500.00 claim based on a contract dated April 9, 1998. The Clerk served the Notice of Filing of Bankruptcy Case on all creditors, including Mr. Samadi, on August 30, 2003. The Notice set forth the deadline for filing a complaint objecting to debtor's discharge of November 25, 2003, and no such complaints were filed. On December 29, 2003, the Chapter 7 Trustee filed a no distribution report, and on December 30, 2003, the Court entered an Order granting the debtor a discharge under 11 U.S.C. § 727 and the case was closed. A copy of the December 30, 2003 Order was served on all creditors including Mr. Samadi.

A closed case may be reopened pursuant to 11 U.S.C. § 350 (b) which provides as follows:

(b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

11 U.S.C. § 350 (b) (2005). If reopening a bankruptcy case would serve no purpose, then cause to reopen does not exist. *Chase Automotive Finance, Inc. v. Kinion (In re: Kinion)*, 207 F.3d 751, 756-57 (5th Cir. 2000); *Horizon Aviation of Virginia, Inc. v. Alexander (In re: Horizon Aviation of Virginia, Inc.)*, 296 B.R. 380, 382 (E.D. Va. 2003).

Mr. Samadi seeks to reopen this case in order to revoke the debtor's discharge, but the deadline for requesting the revocation of a debtor's discharge expired on December 30, 2004. Section 727(d) sets forth the grounds for revoking a discharge, and Section 727(e) provides the deadlines for making such a request. Section 727(d) provides as follows:

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if -

- (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;
- (2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or
- (3) the debtor committed an act specified in subsection (a)(6) of this section.

11 U.S.C. § 727 (d) (2005). Mr. Samadi alleges that the debtor committed a number fraudulent acts prior to the filing of the bankruptcy case, and he alleges that the debtor provided the Court with a low and inaccurate statement of income and an inaccurate description of his occupation as an "Auto Detailer" rather than an "Auto Dealer." Mr. Samadi has not alleged that the debtor knowingly and fraudulently failed to report any property or the right to acquire any property, and he does not

allege that the debtor refused to comply with any order of the Court. Thus, the only provision under which Mr. Samadi could seek to revoke the debtor's discharge is § 727(d)(1).

Section 727(e)(1) gives a creditor one year after the discharge is granted to request a revocation under § 727(d)(1). Debtor's discharge was granted on December 30, 2003, and thus, the statutory deadline for Mr. Samadi to request a revocation of debtor's discharge was December 30, 2004. *See e.g. Hiersche v. Brassard (In re: Brassard)*, 162 B.R. 375, 379-80 (Bankr. D. Maine 1994); *Clay County Bank v. Culton (In re: Culton)*, 161 B.R. 76, 78-79 (Bankr. M.D. Fla. 1993). Courts do not have the discretion to extend the deadline to file a complaint to revoke the debtor's discharge. Fed. R. Bankr. P. 9006, 9024 (2005); *Karr v. Pankey (In re: Pankey)*, 145 B.R. 244, 246 (W.D. Tenn. 1992); *In re: Barrup*, 53 B.R. 215, 219 (Bankr. D. Vt. 1985). Because Mr. Samadi filed his motion to revoke debtor's discharge on January 3, 2005, after the December 30, 2004 deadline, his request is time barred and reopening the case would serve no purpose.

There are two other problems with Mr. Samadi's pleadings. First, a proceeding to revoke a debtor's discharge must be commenced as an adversary proceeding with the filing of a complaint. Fed. R. Bankr. P. 7001(4) (2005); *Nese v. Lockay (In re: Lokay)*, 269 B.R. 132, 138 (Bankr. W.D. Pa. 2001). Mr. Samadi's motion to revoke discharge is not a complaint, and therefore, it is procedurally improper. Second, it appears that Mr. Samadi did not serve either motion on the debtor or debtor's counsel as required by Fed. R. Bankr. P. 7004. The Certificate of Service attached to the motion to revoke the discharge shows service on the former United States Trustee and the Chapter 7 Trustee, but not on debtor or debtor's counsel Richard Otonicar, and there is no Certificate of Service filed relating to the motion to reopen.

For all the above reasons, the motion to reopen and the revoke the debtor's discharge cannot be granted, and the motions are hereby DENIED.

IT IS SO ORDERED, this _____ day of January, 2005.

JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

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